FILED
SEP 24 1956
JOHN T. FEY, Clerk

No. 449

U.S. Supreme Court

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

DISTRICT OF COLUMBIA, *Petitioner*,

v.

VENSTONE STONE, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The District of Columbia, a municipal corporation, by its attorneys, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled cause on June 28, 1956.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (Appendix, *infra*, pp. 1A-28A) is reported at ..... U. S. App. D. C. ....., ... F. 2d ..... The opinion of the Municipal Court of Appeals for the District of Columbia (Appendix, *infra*, pp. 1B-4B) is reported at 112 A. 2d 499, and its order denying a motion for rehearing appears at Appendix, *infra*, p. 5B.

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JURISDICTION

The judgment of the Municipal Court of Appeals was entered on March 14, 1955 (Appendix, *infra,* p. 1B), and its order denying motion for rehearing was entered on April 5, 1955 and appears at Appendix, *infra,* p. 5B. The judgment of the United States Court of Appeals for the District of Columbia Circuit (Appendix, *infra,* p. 29A) was entered June 28, 1956. The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

An Act of Congress, approved February 28, 1933, 47 Stat. 1370, ch. 138 (Section 12-208, D. C. Code, 1951 Edition), provides that:

> "No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained, he, his agent, or attorney *gave notice in writing to the commissioners of the District of Columbia of the approximate time, place, cause, and circumstances of such injury or damage: Provided, however,* That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision." [Emphasis supplied]

Respondent sustained an injury on public space and, within six months thereafter, his attorney, in writing, notified the Corporation Counsel, but not the Commissioners, of the accident. The letter did not give the "approximate time" of the accident, it incorrectly designated the "place", and made no mention of the "cause and circumstances" of the accident.

Through some third person, the Metropolitan Police Department received a report of respondent's injuries. The report gave an "approximate time," but incorrectly desig-

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nated the "place," and made no mention of the "cause and circumstances" of the accident. The Circuit Court, Judge Prettyman dissenting, ruled that the above-quoted statute was thereby complied with.

In the view of the petitioner, the questions presented are:

1. Did not the United States Court of Appeals for the District of Columbia Circuit, by so ruling, infringe upon and usurp the function of the Congress?

2. Was not the petitioner, by such ruling, denied due process of law guaranteed to it by the Fifth Amendment to the Constitution?

3. Were the requisites prescribed by the Congress as conditions precedent to the maintenance of an action against the District of Columbia for unliquidated damages met by:

A. The letter to the Corporation Counsel? or

B. The report to the Metropolitan Police Department?

STATUTES INVOLVED

Act of Congress approved February 28, 1933, 47 Stat. 1370, ch. 138 (Section 12-208, D. C. Code, 1951 Edition):

> "No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained, he, his agent, or attorney gave *notice in writing to the commissioners of the District of Columbia of the approximate time, place, cause, and circumstances of such injury or damage: Provided, however,* That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision." [Emphasis supplied]

STATEMENT

The respondent commenced, in the Municipal Court for the District of Columbia, an action claiming damages for

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personal injuries sustained as the result of the alleged negligence of petitioner in maintaining a "manhole and cover" (Appendix, *infra*, pp. 1C-2C). The Municipal Court had jurisdiction under the Act of April 1, 1942, 56 Stat. 192 (Section 11-755, D. C. Code, 1951 Edition), because the amount in controversy did not exceed the sum of $3,000. The Municipal Court of Appeals for the District of Columbia had jurisdiction to review the judgment of the Municipal Court, under the provisions of Section 11-772, D. C. Code, 1951 Edition (Act of April 1, 1942, 56 Stat. 195). The United States Court of Appeals for this Circuit had jurisdiction to review the judgment of the Municipal Court of Appeals under Section 11-773, D. C. Code, 1951 Edition (Act of April 1, 1942, 56 Stat. 196).

Petitioner filed a motion for summary judgment (Appendix, *infra*, p. 2C) and, during the argument thereof, an excerpt from a police report (Appendix, *infra*, p. 3C) was read to the court by counsel. The motion was denied (Appendix, *infra*, p. 3C), there was a trial and a Municipal Court jury returned a verdict for respondent, upon which judgment was entered (Appendix, *infra*, p. 3C).

Petitioner appealed to the Municipal Court of Appeals for the District of Columbia contending that the trial court erred in refusing to direct a verdict in its favor since the record did not disclose compliance with the statutory requirements prescribed by Section 12-208, D. C. Code, 1951 Edition (*supra*, p. 3), as a condition precedent to the maintenance of the action for unliquidated damages against the petitioner.

The Municipal Court of Appeals observed that on April 30, 1953 respondent's attorney addressed a letter to the Corporation Counsel advising that respondent was injured "on April 15" in an accident at the northwest corner of Sixth and L Streets, S. E., that a report to the Metropolitan Police Department indicated that the injury had been sustained at the southeast corner (Appendix, *infra*, p. 2B),

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that in his complaint respondent alleged that his injury was sustained near the corner of Sixth and L Streets, S. E. (Appendix, *infra*, p. 2B), and that at the trial respondent's proof was that he sustained his injury when he stepped on the edge of a manhole cover at the northeast corner of Sixth and L Streets, S. E. (Appendix, *infra*, p. 2B). The Municipal Court of Appeals made the further observation from the record (Appendix, *infra*, p. 3B).

> "The intersection of 6th and L Streets, S. E., is not a typical four-corner intersection. Rather, it is different in that 6th Street, which runs north and south, upon meeting L Street, which runs east and west, does not continue directly north. In order to continue north on 6th Street it is necessary to proceed in an easterly direction on L Street approximately 200 feet. Thus the northeast and northwest corners of 6th and L Streets, S. E., are approximately 200 feet east of the southeast and southwest corners.
>
> "It appears from the record that there is more than one manhole cover at this intersection and that an agent of the District Government, in conducting his investigation, inspected a manhole cover other than the one on the northeast corner. * * * "

The Municipal Court of Appeals then reversed the judgment of the trial court on the authority of *McDonald* v. *District of Columbia*, 95 U. S. App. D. C. 305, 221 F. 2d 860, which held that inaccuracies respecting the place of an injury contained in a written notice seasonably sent to the Commissioners of the District of Columbia were not cured by subsequent corrections conveyed to an Assistant Corporation Counsel to whom the original notice had been referred.

The United States Court of Appeals for the District of Columbia Circuit allowed an appeal and, after oral argument before a three-judge division of the court but before

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decision, set the case down for rehearing *en banc* "because the court wished to reconsider its ruling in *McDonald*" (Appendix, *infra*, p. 3A).

The primary question considered by the Circuit Court of Appeals *en banc*,[1] however, was whether the requirement of written notice of claim prescribed by Section 12-208, D. C. Code, 1951 Edition, was satisfied either by a letter addressed to the Corporation Counsel,[2] which gave an incorrect corner of an intersection as the location of the accident, or by a police report (Appendix, *infra*, p. 4A) based upon information transmitted through some third person that the accident occurred at a different, but still incorrect, corner of the intersection (Appendix, *infra*, p. 5A).

The court, speaking through Washington, Circuit Judge, with Miller and Bastian, Circuit Judges, joining in the opinion, held, in reversing, that, for the purposes of Code Section 12-208, *supra*, a written notice of claim addressed to the Corporation Counsel, if otherwise adequate, is equivalent to written notice to the Commissioners. The reason assigned for this ruling was that the Congress had provided by Section 1-301, D. C. Code, 1951 Edition, that the Corporation Counsel "shall * * * have charge and conduct of all law business of the said District and all suits instituted by and against the Government thereof."

Although such written notice to the Corporation Counsel contained no statement as to the "approximate time," the "cause" or "circumstances" of the injury and gave an incorrect description of the "place" of such injury, the court concluded that the notice was adequate.

The opinion held also that the police report (Appendix, *infra*, p. 5A) which was based upon information originating with respondent but transmitted through some third person and which, like the written notice to the Corporation Coun-

[1] The Circuit Court then consisted of eight judges.

[2] The written notice was never a part of the record, but by an amendment to the pretrial order it was stipulated that under date of April 30, 1953, respondent's attorney addressed a letter to the Corporation Counsel advising that respondent "was injured April 15, at the northwest corner of Sixth and L Streets, S. E."

sel, contained an incorrect description of the place of the injury and no statement as to the "cause" and "circumstances" of such injury was nevertheless "sufficient notice for the purposes of the proviso to Section 12-208, *supra*" (Appendix, *infra*, p. 5A), even though it was never introduced in evidence.

Although only three judges joined in the opinion, Judges Edgerton and Fahy concurred in the reversal of the judgment of the Municipal Court of Appeals. Judges Edgerton and Bazelon, however, agreed that *McDonald* v. *District of Columbia*, 95 U. S. App. D. C. 305, 221 F. 2d 860, *supra*, should be overruled insofar as it holds that notice of claim must be given to the Commissioners of the District of Columbia as a condition precedent to the maintenance of an action against the District of Columbia for unliquidated damages and that an otherwise adequate notice addressed to the Corporation Counsel is not sufficient.

Circuit Judge Bazelon filed a separate opinion. While concurring in the view that *McDonald* should be overruled, he was of the opinion that the appeal should have been dismissed as improvidently granted, because it "cannot be concluded from this record, * * * that the District had, either from Stone or from other sources, the notice prescribed by the statute" (Appendix, *infra*, p. 7A).

In this connection Judge Bazelon pointed out (Appendix, *infra*, p. 6A) that in the complaint it was alleged that respondent notified the Commissioners of the District of Columbia in writing, within the six months' statutory period, whereas all that appeared from the record was a stipulation in an amended pretrial order that a letter was addressed to the Corporation Counsel under date of April 30, 1953, advising that the respondent "was injured April 15 at the northwest corner of Sixth and L Streets, Southeast."

Further, Judge Bazelon noted (Appendix, *infra*, p. 8A) that the police report was not mentioned in the complaint and that, aside from the fragmentary excerpt therefrom

which described a different but incorrect place of the accident, there was no evidence pertaining to it in the record.

In a dissenting opinion (Appendix, *infra*, pp. 9A-12A) Circuit Judge Danaher concurred with the view of Judge Bazelon that the record failed to disclose proof of notice of claim prescribed by Section 12-208, *supra*, and that the appeal should have been dismissed, but sharply disagreed with the opinion of Judge Washington and with the overruling of *McDonald*.

In a very strongly-worded dissenting opinion, Judge Prettyman concurred in the opinion of Judge Danaher (Appendix, *infra*, p. 12A), and concluded that *McDonald* was correctly decided originally and that the Municipal Court of Appeals correctly decided *Stone*. Judge Danaher joined in this conclusion. Judge Prettyman reviewed reported cases decided by courts of last resort in approximately 30 states in which notice statutes similar to Section 12-208, D. C. Code, 1951 Edition, *supra*, were construed. He then concluded that:

> "In our opinion this notice, as we have it on this record, was defective in every important respect in the substance of what the statute required. The court holds such a notice to be valid in this jurisdiction. No other court decision that we have been able to find would support such a holding on such a notice." (Appendix, *infra*, p. 28A)

REASONS FOR GRANTING THE WRIT

The decision of the majority of the court below in effect repeals the Act of Congress[3] which prescribed

[3] Section 12-208, D. C. Code, 1951 Edition:
"No action shall be maintained against the District of Columbia for unliquidated damages to person or property unless the claimant within six months after the injury or damage was sustained, he, his agent, or attorney gave notice in writing to the commissioners ofthe District of Columbia of the approximate time, place, cause, and circumstances of such injury or damage: *Provided, however*, That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision. (Feb. 28, 1933, 47 Stat. 1370, ch. 138.)"

the conditions under which an action may be maintained against the District of Columbia for unliquidated damages. It accomplishes that result by holding that the plain and simple yet definite requirements prescribed by the Congress are nothing more than idle formalities which, in the absence of some showing by the petitioner of prejudice, may be disregarded.

Under the basic and fundamental doctrine of separation of powers, courts are forbidden to encroach upon or to interfere with the legitimate exercise of the legislative function. Consequently, a court may not substitute its judgment for that of the legislature as to matters within the discretion of the legislature; nor may it re-write a statute in accordance with its own notions. The function of the court is to declare the law as it finds it and to construe the law as it is. It follows that equitable considerations may not be regarded as controlling so as to relieve a person from failure to comply with a statute. 16 C. J. S. "Constitutional Law" § 151, pp. 721-725; see also *Dixie Margarine Company* v. *Shaefer*, 139 F. 2d 221, cert. den. 321 U. S. 791, 88 L. Ed. 1081.

It is not for the courts to tamper with the words of a statute or by a strained construction of legislative enactments, of which the language is clear and explicit, to accomplish results not contemplated by the Congress which enacted it. *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S. 1, 15 S. Ct. 508, 39 L. Ed. 601. This being so, if the judiciary so tamper with a legislative enactment as to deprive a party litigant of a substantive right or a defense which the legislature has provided in specific language, there can be no doubt that the litigant has been deprived of the due process of law guaranteed him by the Fifth Amendment.

In his dissenting opinion, Judge Prettyman characterized the action of the majority of the court as follows:

> "In its present opinion *this court is enacting a new statute.* We think the court has no power

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to do so and, even if it had power, it should not do so. The court makes two fundamental changes in the requirements made by Congress. First, it selects the Corporation Counsel as the official to receive these notices. It does so because he has charge of all law business and suits instituted against the District Government. * * * *The court disagrees with the Congress, and so the court changes the statute.*

* * * * * * * * * *

"The second fundamental change made in the statute by the court is in substituting a general doctrine of equity, non-prejudice, and acquired knowledge for plain and specific requirements. * * * We are not sure that the court requires any written notice. Certainly, instead of treating the notice provision as mandatory, as the other courts of the country do, it treats it as a procedural incident.

"To our minds the opinion of the court is a complete rewriting of the plain and simple requirements of the statute. * * *" (Appendix, *infra*, p. 14A). [Emphasis supplied]

The statute reflects the policy adopted by the Congress in the exercise of its plenary and exclusive power to legislate for the District of Columbia. Even if Section 12-208, *supra*, was not such a plain statute the court below should have done nothing more than to interpret the statute. Certainly the court had no power to overrule the congressional policy, nor should the court have sat in judgment on the merits or wisdom of the legislation. It may well be that the decision of the court is a manifestation of wisdom greater than the collective wisdom of the Congress, but the policy of the Congress had been established and, by attempting to change it, the court usurped the legislative function. *Hilton* v. *Sullivan*, 334 U. S. 323, 339; *Secretary of Agriculture* v. *Central Roig Refining Co.*, 338 U. S. 604, 618-619.

In *United States* v. *Hutcheson,* 312 U. S. 219, 235, this Court said:

> " * **The appropriate way to read legislation in a situation like the one before us, was indicated by Mr. Justice Holmes on circuit: 'A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur in the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before.' "

The opinion of the majority is based upon a novel and unprecedented construction of language in the statute which is so clear and unambiguous as to require no construction. But more than this, it establishes a concept of municipal liability in tort which is in direct conflict with the expressed intent of the Congress.

The tremendous importance of this case to the District of Columbia is best demonstrated by the fact that the Court of Appeals for the District of Columbia in 1932 was impelled by the vulnerability of the District, as are all municipalities, to manufactured claims, to suggest the enactment of the very statute which the United States Court of Appeals for the District of Columbia Circuit has by the majority opinion herein completely nullified. *District of Columbia* v. *Leys,* on rehearing, 62 App. D. C. 3, 5, 63 F. 2d 646, 648, *post* page 18.

Specifically, and notwithstanding the clear and unambiguous language employed in Section 12-208, *supra,* a majority of the court below held:

1. That written notice of claim to the Corporation Counsel, if otherwise adequate, satisfies the unequivocal statutory requirement of written notice to the Commissioners of the District of Columbia.

2. That such written notice of claim is adequate even though it does not give the "approximate time", incorrectly designates the "place", and does not mention the "cause and circumstances" of the injury.

3. That a police report based upon information emanating from a claimant but furnished to the Metropolitan Police Department through some third person is sufficient notice of claim for the purposes of the proviso in the statute, even though, in this case, such report was not introduced in evidence, was not a part of the record, and the excerpt therefrom (Appendix, *infra*, p. 3C) contained an incorrect designation of "place" and did not mention the "cause and circumstances" of any injury.

For these reasons and others which will be demonstrated, the decision should be reviewed by this Court.

ARGUMENT

I

The letter addressed to the Corporation Counsel did not satisfy the requirements of the statute.

The respondent alleged in his complaint (Appendix, *infra*, p. 1C) that he gave the Commissioners of the District of Columbia written notice of his claim. What appears from the record in this connection is a stipulation in an amended pretrial statement to the effect that under date of April 30, 1953, respondent's attorney addressed a letter to the Corporation Counsel advising that "* * * plaintiff was injured April 15, at the northwest corner of sixth and L Streets, southeast." (Appendix, *infra*, p. 6A).

A majority of the court below held that such a letter to the Corporation Counsel, if otherwise adequate, was suffi-

cient to satisfy the requirements of the statute. In support of this ruling the court below said the notice of claim required by the statute relates to potential suits against the District of Columbia and that such notices are transmitted to the Corporation Counsel as a matter of course. The court reasoned from this that a notice of claim against the District of Columbia is "law business" for the purposes of Section 1-301, D. C. Code, 1951 Edition, which provides:

> "The corporation counsel shall be under the direction of the Commissioners, and have charge and conduct of all law business of the said District, and all suits instituted by and against the government thereof. He shall furnish opinions in writing to the Commissioners, whenever requested to do so. All requests for opinions shall be transmitted through the Commissioners, and a record thereof kept, with the opinions, in the office of the secretary of the Board of Commissioners. He shall perform such other professional duties as may be required of him by the Commissioners. (Leg. Assem. Aug. 23, 1871, ch. 108, § 18; June 20, 1874, 18 Stat. 116, ch. 337, § 2; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Mar. 4, 1923, 42 Stat. 1488, ch. 265.)"

It is, of course, true that claims against the District of Columbia often result in lawsuits, but it is well established law that, without more, neither the receipt of notice of claim nor the investigation, processing, or adjustment of claims is necessarily "law business." See *American Automobile Association* v. *Merrick*, 73 App. D. C. 151, 153, 117 F. 2d 23, modifying *American Automobile Association* v. *Merrick*, 31 F. Supp. 876. See also *Liberty Mutual Insurance Co.* v. *Jones*, 130 S. W. 2d 945, 955-961, 125 A. L. R. 1149, 1171.

From this it follows that no claim against the District of Columbia for unliquidated damages can be considered "law

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business" for the purposes of Section 1-301, D. C. Code, 1951 Edition, until referred to the Corporation Counsel by the Commissioners of the District.

Reason and principle support this view. Reference to Sections 1-902 - 1-905, D. C. Code, 1951, and Section 1-906, D. C. Code, 1951, Supp. IV, shows that Congress specifically reposed in the Commissioners the authority both to settle claims against the District and to compromise claims which the District has against others.

Since all appropriations of public revenues for the settlement of claims must be expended under the direction of the Commissioners, it was reasonable and sensible for the Congress to provide that " * * * no action shall be maintained against the District of Columbia for unliquidated damages * * * unless the claimant * * * gave notice in writing to the Commissioners * * *."

II

The notice of claim did not otherwise meet the requirements of the statute because: It did not give the "approximate time", it incorrectly designated the "place", and it did not state the "cause and circumstances" of the injury.

The letter addressed to the Corporation Counsel (Appendix, *infra*, p. 6A) did not give the "approximate time", it incorrectly designated the "place", and it made no mention of the "cause and circumstances" of the injury or damage. The majority of the court below, however, decided that the letter was adequate and sufficient to meet the requirements of Section 12-208, D. C. Code, 1951 Edition, *supra*.

The court apparently based its ruling solely on the fact that, within two months after the accident, petitioner made photographs and interviewed witnesses. In this connection the court said " * * * had the report * * * merely referred to 6th and L Streets, S. E., without reference to a specific

corner we think the notice would have been beyond question." (Appendix, *infra*, p. 5A).

But as Judge Bazelon pointed out (Appendix, *infra*, p. 7A) there is nothing in the record to show that petitioner was aware at the time the photographs were taken or at any time within the six months period that the accident occurred at any place other than the northwest corner of the intersection as stated in the letter to the Corporation Counsel.

The vice of the court's ruling, however, was perhaps best demonstrated by Judge Prettyman's comment respecting the deficiencies in the notice. Said Judge Prettyman in his dissenting opinion:

> "Our statute requires that the notice state 'the approximate time, place, cause, and circumstances of such injury or damage.' This notice, as we have it before us, did not state any circumstances—whether claimant was walking or driving, whether he was hit by a truck, fell into a hole, slipped on a wet spot, fell over a barrier, or tripped on a sidewalk defect, whether the sidewalk or the parking or the street was torn up, or any other circumstance whatever. The notice does not describe any injury or damage. It does not say whether claimant bumped his head, broke his leg, injured his back, or merely cut his finger. It does not give any cause of the injury—whether a defect in a sidewalk, a defective manhole cover, negligent driving of a city truck, loose stones, improper lighting over repair work, or any other cause whatever. The notice does not give any approximate time—either an hour or whether morning, afternoon, evening or nighttime; it gives only a date. It does not give an approximate place (even assuming the statute requires only the 'approximate' place, a disputed point). It gives only a corner at an intersection, and an irregular intersection at that, but not whether on the sidewalk, in the street, on a crosswalk, or in a tree space. The

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Since all appropriations of public revenues for the settlement of claims must be expended under the direction of the Commissioners, it was reasonable and sensible for the Congress to provide that " * * * no action shall be maintained against the District of Columbia for unliquidated damages * * * unless the claimant * * * gave notice in writing to the Commissioners * * *."

II

The notice of claim did not otherwise meet the requirements of the statute because: It did not give the "approximate time", it incorrectly designated the "place", and it did not state the "cause and circumstances" of the injury.

The letter addressed to the Corporation Counsel (Appendix, *infra,* p. 6A) did not give the ''approximate time'', it incorrectly designated the ''place'', and it made no mention of the ''cause and circumstances'' of the injury or damage. The majority of the court below, however, decided that the letter was adequate and sufficient to meet the requirements of Section 12-208, D. C. Code, 1951 Edition, *supra.*

The court apparently based its ruling solely on the fact that, within two months after the accident, petitioner made photographs and interviewed witnesses. In this connection the court said " * * * had the report * * * merely referred to 6th and L Streets, S. E., without reference to a specific

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But as Judge Bazelon pointed out (Appendix, *infra*, p. 7A) there is nothing in the record to show that petitioner was aware at the time the photographs were taken or at any time within the six months period that the accident occurred at any place other than the northwest corner of the intersection as stated in the letter to the Corporation Counsel.

The vice of the court's ruling, however, was perhaps best demonstrated by Judge Prettyman's comment respecting the deficiencies in the notice. Said Judge Prettyman in his dissenting opinion:

> "Our statute requires that the notice state 'the approximate time, place, cause, and circumstances of such injury or damage.' This notice, as we have it before us, did not state any circumstances—whether claimant was walking or driving, whether he was hit by a truck, fell into a hole, slipped on a wet spot, fell over a barrier, or tripped on a sidewalk defect, whether the sidewalk or the parking or the street was torn up, or any other circumstance whatever. The notice does not describe any injury or damage. It does not say whether claimant bumped his head, broke his leg, injured his back, or merely cut his finger. It does not give any cause of the injury—whether a defect in a sidewalk, a defective manhole cover, negligent driving of a city truck, loose stones, improper lighting over repair work, or any other cause whatever. The notice does not give any approximate time—either an hour or whether morning, afternoon, evening or nighttime; it gives only a date. It does not give an approximate place (even assuming the statute requires only the 'approximate' place, a disputed point). It gives only a corner at an intersection, and an irregular intersection at that, but not whether on the sidewalk, in the street, on a crosswalk, or in a tree space. The

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corner of Sixth and L Streets, S. E., is not a square, four-corner intersection. It is an irregular intersection, at which Sixth Street, going north, comes to a dead end at L Street, then shifts to the east some 200 feet, and there resumes its way north. Even such location as was given in the notice was not correct; the notice said the northwest corner, whereas the proof was the northeast corner.

"*In our opinion this notice, as we have it on this record, was defective in every important respect in the substance of what the statute required. The court holds such a notice to be valid in this jurisdiction. No other court decision that we have been able to find would support such a holding on such a notice.*" (Apendix, *infra*, p. 27A-28A) [Emphasis supplied]

III

The police report did not constitute notice of claim under the proviso in the statute.

The majority of the court below committed perhaps its most greivous error when it held (Appendix, *infra*, p. 5A) that a police report, only an excerpt from which is in the record (Appendix, *infra*, p. 3C), constituted sufficient notice of claim for the purposes of the proviso in § 12-208, D. C. Code, 1951 Edition, *supra*, which reads:

> "* * * That a report in writing by the Metropolitan police department, in regular course of duty, shall be regarded as a sufficient notice under the above provision."

There is nothing in the record to show that at the trial respondent relied upon any police report to establish notice of claim. In fact, the police report was not even mentioned in the complaint (Appendix, *infra*, p. 1C) and no evidence pertaining to it was introduced. The only mention of a police report was made before trial during oral argument

on the unsuccessful motion for summary judgment when an excerpt [4] from it was read to the court.

Moreover, even a casual examination of the part of the report in the record (Appendix, *infra*, p. 3C) is sufficient to disclose its deficiencies. While it gives an "approximate time", it makes no mention of any injury or damage or the "cause" or "circumstances" of any injury or damage. The abbreviated report does designate a "place", the southeast corner of the intersection, but it was thereafter established that the designation of place was incorrect and that the accident really occurred at the northeast corner of the intersection.

The majority of the court below, although conceding that the "report" was not based upon the personal knowledge of any police officer or upon information obtained as the result of investigation, held (Appendix, *infra*, p. 5A) that it was "prepared in the regular course of duty" of a police officer and therefore constituted notice of claim for purposes of the proviso.

The report in question when tested by the provisions of § 4-134, D. C. Code, 1951 Edition, Supp. IV, falls far short of meeting the standards of a report "* * * by the Metropolitan police department made in the regular course of duty." But whatever view may be taken respecting the sufficiency of the report under that section, it is crystal clear that it failed as utterly as did the letter addressed to the Corporation Counsel to satisfy the requirements of Section 12-208 of the Code.

ADDITIONAL REASONS FOR GRANTING THE WRIT

The decision of the majority of the court below was not supported by a single citation of authority. Petitioner submits that the reason for this is that there is no authority

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[4] "* * * Venstone Stone, colored, thirty-one (31) years of age, 630 'M' Street, S. E., reports at about 6:35 a. m. on April 15, 1953, while walking on the sidewalk on the southeast corner of 6th and L Streets, S. E. * * *"

supporting the decision. Judge Prettyman made this clear in his vigorous dissenting opinion (Appendix, *infra*, pp. 12A-28A).

Some thirty or more states have statutes similar to Section 12-208, D. C. Code, 1951 Edition, and questions similar to that presented to the court below have been considered and disposed of by courts of last resort in such states. But insofar as petitioner has been able to ascertain from an examination of reported cases, no court of last resort has ever sustained any such notice of claim as that presented by this record.

The importance of this case to petitioner can be best demonstrated when viewed against the background of the municipal structure which is the government of the District of Columbia. The District of Columbia, like other large municipalities, has many departments, divisions, and agencies whose functions touch at vital points the personal and property rights, not only of local residents, but also of the thousands of visitors who come here from time to time.

The functions of the municipal government are performed in offices scattered all over the District of Columbia proper and the metropolitan area extending into Maryland and Virginia. Its offices and shops are manned by thousands of officers and employees upon whom rests responsibility for the performance of the numerous municipal and governmental functions.

In excess of 1500 motor vehicles are operated daily in the performance of such functions which include the construction and maintenance of some 3,000 miles of streets, sidewalks and alleys, the construction and maintenance of sewers and watermains, the conduct of a hospital, the operation of many clinics, schools, and correctional institutions, the furnishing of police and fire protection, of a sanitation department and of other departments concerned with public safety, health and welfare.

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Injuries to person and damage to property frequently arise out of the performance of such functions and claims and lawsuits follow almost as an inevitable consequence.

The case of *District of Columbia* v. *Leys*, 62 App. D. C. 3, 5, 63 F. 2d 646, which was decided prior to the enactment of the notice statute embodied in Section 12-208, D. C. Code, 1951 Edition, *supra*, is illustrative of the difficulties encountered by the municipal authorities in the disposition of lawsuits arising out of injuries sustained on public space. There the plaintiff alleged that she had fallen at one location and was permitted by the court to amend her declaration so as to charge that she fell at an entirely different location. The record of the case shows that, at trial, a third location was substituted. The plaintiff recovered judgment and the court below affirmed. On rehearing, it was said at page 5:

> "* * * But our consideration of this cause indicates that the District of Columbia was hampered in its defense by the lapse of time between the injury and the suit, during which no claim was made or notice given of the alleged injury.
>
> "This course, whether inadvertent or designed, was open to the claimant in the present state of the law, which leads us to suggest again, as we did at the hearing, a change in the statute of limitations applicable to such cases, or the enactment of a requirement that one alleging himself to be injured as a result of a defective highway or sidewalk must make a sworn complaint thereabout to the District government within some short but reasonable period, in default of which any legal action thereupon shall be barred.
>
> "Such a requirement would not only enable the District of Columbia to deal with the complaint and prepare its defense while the matter is fresh and evidence available, but also to safeguard other persons from possible injury by remedying the defective conditions, if any were found to exist.

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"Provisions of this character appear to be included in a bill recently introduced into the House of Representatives by Mrs. Norton, and are to be found in city charters in Virginia and elsewhere."

The bill to which the Court of Appeals referred was H. R. 13750, 72d Congress, 2d Session. The bill was approved as the Act of February 28, 1933, 47 Stat. 1370, and appears as Section 12-208, D. C. Code, 1951 Edition, above.

That Congress intended that all such claims and lawsuits should be disposed of in a manner consistent with the public interest is clear from the language employed in Section 12-208 of the Code and its legislative history. The latter is particularly illuminating. In the report of the House District Committee (Report No. 2010, 72d Congress, 2d Session) it was said:

"The purpose of the bill is to protect the District of Columbia against unreasonable claims and to assist it in the defense of the public interest where claims are made within the 3-year statute of limitations but so long after the event that it is impossible for the District of Columbia to obtain evidence for use in litigation which may result.

"Numerous instances were recited to the committee in which notice of injury as a result of alleged defective sidewalks, or other conditions, were brought to the attention of the commissioners by a filing of a suit for damages more than two years after the alleged injury occurred. During the intervening period the sidewalk may have been entirely replaced. Witnesses to the accident had moved and could not be located and the circumstances surrounding the injury had become a matter entirely within the knowledge of the plaintiff.

* * * * * * * * *

"* * * It was thought also that an approximate estimate of the time of the accident should be suffi-

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cient and the word 'approximate' was therefore inserted in the bill. *Witnesses appearing for the District stated that a general description of the place would be inadequate as the actual conditions at the particular place must be inspected so the word 'place' was left as in the original draft of the bill.* The proviso added takes care of those instances in which actual notice is had by the District of Columbia from the police department, although technical notice may not have been filed by the person injured.

"*The committee is definitely of the opinion that this legislation is essential to protect the revenues of the District of Columbia from unreasonable suits and that with the amendments offered adequate protection of the rights of individuals is secured and the bill should pass.*" [Emphasis supplied]

It is unthinkable that the Congress, in selecting and designating the Commissioners of the District of Columbia as the officials to receive notice of claim, was not aware of what it was doing or that it did not intend that the procedure it prescribed should be followed.

The whole pattern of legislation on this general subject evidences the concern of the Congress that all claims for injury to person or damage to property be disposed of in a manner consistent with the public interest. See in this connection Sections 1-902 and 1-903, D. C. Code, 1951 Edition.

CONCLUSION

Congress, therefore, did not do a senseless thing when it prescribed plain and simple requirements as conditions precedent to the maintenance of any action against the District of Columbia for unliquidated damages.

Manifestly, therefore, the decision of the majority of the court below constitutes an unwarranted encroachment on the legislative function and, unless reversed, the clear purpose of the Congress will be defeated.

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In view of the foregoing, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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